

1982 WL 189369 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 19, 1982

*1 Mr. Thomas W. McElmurray
Chairman
Aiken Soil and Water Conservation District
117 Park Avenue, S.E.
Room 11
Aiken, South Carolina 29801

Dear Mr. McElmurray:

You have requested the opinion of this Office on the question of whether it is a violation of the dual office holding provisions of the South Carolina Constitution for a person to serve concurrently on the Aiken Soil and Water Conservation District Commission and on the Aiken County School Board.

It is provided in [Article XVII, § 1A of the South Carolina Constitution](#) that ‘. . . no person shall hold two offices of honor or profit at the same time.’ For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. [Sanders v. Belue, 78 S.C. 171 \(1907\)](#). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. [State v. Crenshaw, 266 S.E.2d 61 \(1980\)](#).

As you are aware, this Office has recently concluded that members of Soil and Water Conservation District Commissions hold offices for dual office holding purposes. *See*, Opinion of the Attorney General dated January 27, 1982, to F. Hall Yarborough (copy enclosed). As well, a review of Act No. 461 of the 1967 Acts and Joint Resolutions, which prescribes the powers and duties of the Aiken County Board of Education reveals that the Board is given the broad power therein to exercise executive, financial and administrative control of the public schools in the county and is also declared to be the ex officio board of school trustees. These functions involve an exercise of a portion of the sovereign power of the State thus making the holders of these positions officers within the meaning of the dual office holding provisions of the South Carolina Constitution. This conclusion is in keeping with previous opinions of this Office which have found members of other County Boards of Education and Trustees to be officeholders in the constitutional sense. *See*, Op. of Atty. Gen. dated February 11, 1981, to Thomas O. Lawton, Jr. (copy enclosed); 1968 Op. Atty. Gen. No. 2500; 1971 Op. Atty. Gen. No. 3135; 1971 Op. Atty. Gen. No 3133; and Op. Atty. Gen. dated February 3, 1978, to Senator Setzler (copy enclosed).

Based on the foregoing, it is the opinion of this Office that a person serving concurrently on the Aiken Soil and Water Conservation District Commission and on the Aiken County School Board would be in violation of the dual office holding provisions of the South Carolina Constitution.

Very truly yours,

Helen T. Zeigler
State Attorney

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